

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Application by)	
Qwest Communications International, Inc.)	WC Docket 02-148
for Authorization To Provide)	
In-Region, InterLATA Services)	
in the States of Colorado, Idaho,)	
Iowa, Nebraska, and North Dakota)	

**IOWA UTILITIES BOARD
WRITTEN CONSULTATION AND EVALUATION
REGARDING QWEST COMMUNICATIONS INTERNATIONAL, INC.**

Diane Munns, Chairman
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Dated: July 3, 2002

I. EXECUTIVE SUMMARY

Based on its extensive review of the record presented by Qwest Corporation (Qwest) the Iowa Utilities Board (IUB) has concluded that Qwest has adequately addressed each of the Section 271 requirements. Additionally, a review of the updated statement of generally available terms (SGAT) filed by Qwest on June 10, 2002, has been completed, and the IUB finds it to be in compliance with each of the conditional statements issued.

II. PROCEDURAL HISTORY

On January 28, 1997, the IUB issued an order initiating an investigation relating to the possible future entry of U S WEST Communications, Inc., n/k/a Qwest Corporation (Qwest), into the interLATA market. The IUB issued an order setting the procedure it intended to follow when Qwest made a filing with the IUB prior to making an Iowa Section 271 application with the Federal Communications Commission (FCC).

When Qwest filed a preliminary application with the IUB on January 31, 2000, the IUB opened an investigation docket, identified as Docket No. INU-00-2, to review the application. At the time of its application, Qwest requested a schedule be set that would allow the IUB to consider all aspects of the docket contemporaneous with the Qwest Regional Oversight Committee (ROC) operational support systems (OSS) test then scheduled for completion in September 2000.

In a filing dated May 4, 2000, Qwest encouraged the IUB to consider a multi-state process for purposes of its review of Track A (competition issues),¹ various aspects of each item on the 14-point competitive checklist, Section 272 (separate subsidiary) issues, and public interest considerations. Through discussions with the Idaho Public Utilities Commission, North Dakota Public Service Commission, Montana Public Service Commission, and the Utah Public Service Commission, a draft procedural schedule was designed to cover most of the concepts that the IUB found necessary in such a multi-state review. The IUB issued an order seeking comments from the participants to the investigatory docket regarding the use of a multi-state review process as detailed in the draft procedural schedule.

The IUB issued an order on August 10, 2000, indicating that its initial review of Qwest's compliance with the requirements of 47 U.S.C. Section 271 would be through participation in the multi-state workshop process. The order contained a procedural schedule to which many changes were made as necessitated by the process.

The multi-state workshop process was successful in narrowing and resolving many of the Section 271 issues that did not require state-specific information. Following evidentiary workshops, which included a total of 38

¹ See 47 U.S.C. § 271(c)(1)(A).

hearing days, The Liberty Consulting Group (Liberty)² issued a total of five separate reports containing proposed resolutions for each impasse issue related to the checklist items. As specified by the IUB, following the filing of each of the reports by Liberty, participants were permitted to file comments or briefs addressing the issues that remained in dispute. Following the issuance of each of the individual reports, the IUB reviewed the record, the report filed by Liberty, and the post-report filings before issuing a conditional statement regarding each of the checklist items. Each of the conditional statements issued by the IUB contained a discussion of each issue remaining at impasse, in addition to a determination by the IUB of each issue.

In August of 2000, a collaborative process was initiated with eleven of the fourteen Qwest state public service commissions participating. The process was known as the Post-Entry Performance Plan (PEPP) collaborative. Between October of 2000 and May of 2001, five separate multi-day workshops were convened, numerous conference calls were placed, and a large quantity of information, proposals, and supporting data were exchanged and reviewed in an attempt to create a "consensus plan."

The PEPP collaborative ended in May of 2001 when Qwest representatives indicated a reluctance to continue with further meetings in the current format, expressing a belief that no further consensus could be reached.

² The Liberty Consulting Group was retained to assist the state commissions collectively by

A final collaborative summary was prepared by MTG Consulting (MTG) and the National Regulatory Research Institute (NRRI) and distributed on June 5, 2001. This summary document contained a list of agreements that had been reached through the collaborative process as well as a list of unresolved issues.³

A telephonic procedural conference was held on August 3, 2001, by Liberty to discuss the possibility of utilizing the multi-state checklist compliance proceedings (seven state commissions were at that time participating) to consider the Section 271-affecting aspects of the performance assurance plan that Qwest intended to file in each state. Ultimately, the seven multi-state workshop states became a nine-state workshop collaborative, with the Washington Utilities and Transportation Commission and the Nebraska Public Service Commission joining the effort.

Procedures were established to allow all participants to file comments and testimony in response to the proposed Qwest performance assurance plan (QPAP), which was filed on or about July 16, 2001, in substantially the same form with all nine collaborating state commissions. Qwest was then permitted to file pre-hearing responses to those comments.

Hearings were scheduled and held during the weeks of August 13 and August 27, 2001. Those hearings included direct, rebuttal, and surrebuttal testimony. In all, eleven witnesses testified during seven days of hearings.

making recommendations for resolution of impasse issues.

Following the hearings, briefs and reply briefs were filed and considered by Liberty, culminating in the filing of a sixth report covering public interest and performance assurance plan issues. Again following the same process as was used in evaluating impasse issues related to the checklist items, the IUB afforded participants an opportunity to file responsive comments to the Liberty report. It then considered the record, Liberty's report and the post-report filings in making its determinations as outlined in its conditional statements on public interest and the QPAP.

The IUB participated in a thirteen-state collaborative effort to evaluate access to Qwest's operational support systems (OSS). KPMG Consulting, Inc. (KPMG) and Hewlett-Packard Consulting (HP) were consultants hired by the Regional Oversight Committee (ROC) for Qwest states to conduct the test of Qwest's OSS. The consultants issued a final report, the culmination of a collaborative effort spanning two and a half years, jointly on May 28, 2002.⁴

The Master Test Plan for the OSS test included thirteen major testing sections covering 32 specific transaction and process tests for which results are included in the final report. The vendors initiated over 6,500 transactions to exercise Qwest's systems and processes. In addition, KPMG performed over 1,000 field observations of commercial transactions between Qwest and its

³ This "Final Collaborative Summary" can be viewed at http://www.nrri.ohio-state.edu/oss/Post271/Post271/final_report.pdf.

⁴ Information about the ROC OSS collaborative, including the final report, can be accessed at <http://www.nrri.ohio-state.edu/oss/oss.htm>.

competitors. During testing, the vendors encountered 497 issues that were documented as observations and exceptions, all of which were investigated and closed. Of the total documented issues, 487 were resolved completely, leaving ten exceptions that were closed/unresolved with some remaining issues not fully resolved. Additionally, a performance measure audit was previously performed by Liberty with results separately published.

Throughout this process the IUB has issued a number of conditional statements resolving impasse issues. The following is a comprehensive list of the conditional statements the IUB has issued.

- Conditional Statement Regarding March 19, 2001, Report, issued June 22, 2001 – Checklist items 3, 7, 8, 9, 10, and 12. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)
- Conditional Statement Regarding May 15, 2001, Report, issued October 12, 2001 – Checklist items 1, 11, 13, and 14. (Qwest Application, Iowa Appendix C, Volume 1, Tab 3)
- Conditional Statement Regarding June 11, 2001, Report "Third Report," issued October 31, 2001 – Emerging Services. (Qwest Application, Iowa Appendix C, Volume 1, Tab 4)
- Conditional Statement Regarding August 20, 2001, Report, issued December 21, 2001 – Checklist items 2, 4, 5, and 6. (Qwest Application, Iowa Appendix C, Volume 1, Tab 5)
- Conditional Statement Regarding Public Interest and Track A, issued January 25, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 6)
- Conditional Statement Regarding General Terms and Conditions and Order Regarding Change Management Process Comments, issued March 12, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 7)

- Conditional Statement Regarding 47 U.S.C. § 272 Compliance, issued April 4, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 8)
- Conditional Statement Regarding Qwest Performance Assurance Plan, issued May 7, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 9)
- Conditional Statement Reconsidering IUB Conditional Statement Regarding August 20, 2001, Report, issued May 9, 2002 – Enhanced Extended Links (EEL) issue. (Qwest Application, Iowa Appendix C, Volume 1, Tab 10)
- Reconsideration of Conditional Statement Regarding 47 U.S.C. § 272 Compliance, issued May 28, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 12)
- Reconsideration of Conditional Statement Regarding Checklist Item 14: Resale, issued May 28, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 11)
- Reconsideration of Conditional Statement Regarding Checklist Item 13: Reciprocal Compensation, issued May 31, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 14)
- Reconsideration of Conditional Statement Regarding Checklist Item 11: Local Number Portability, issued May 31, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 13)
- Conditional Statement Regarding Change Management Process Compliance, issued June 6, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 15)
- Conditional Statement Regarding Data Reconciliation of Performance Measures in the ROC OSS Test, issued June 6, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 16)
- Order to Consider Unfiled Agreements, issued June 7, 2002 – Relevance of unfiled agreement on the public interest determination. (Qwest Application, Iowa Appendix P, Volume 3, Tab 24)

- Conditional Statement Reconsidering Public Interest, issued June 7, 2002 – Reconsideration of price squeeze argument. (Qwest Application, Iowa Appendix P, Volume 3, Tab 25)
- Reconsideration of Conditional Statement Regarding Qwest Performance Assurance Plan, issued June 7, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 17)
- Conditional Statement Regarding Qwest Communications' OSS Evaluation and Order Closing Inquiry Docket, issued June 10, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 46)
- Order Denying Petition to Intervene and Motion to Reopen Proceedings, issued June 11, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 47)
- Final Statement Regarding Qwest Corporation's Compliance with 47 U.S.C. §§ 271 and 271 Requirements, issued June 12, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 50)

III. STATUTORY FRAMEWORK

For Qwest to be granted entry into the market for provision of in-region interLATA services it must comply with certain provisions of 47 U.S.C. § 271. A Bell Operating Company (BOC), as defined in 47 U.S.C. § 153(4) must apply to the FCC for authorization to provide interLATA services originating in any in-region state.⁵ The FCC is required to issue a written determination on each application no later than 90 days after receiving such application.⁶

The FCC must also consult with the relevant state commission to verify that the BOC has one or more state-approved interconnection agreements with a

⁵ 47 U.S.C. § 271(d)(1).

⁶ *Id.* § 271(d)(3).

facilities-based competitor, or an SGAT, and that the "competitive checklist" is satisfied, either by the agreement(s) or general statement.⁷ No standard for the consideration of a state commission's verification under Section 271(d)(2)(B) is specified. Thus, the FCC has discretion in each Section 271 proceeding to determine the amount of weight to accord the state commission's verification.⁸ The FCC has held that, although it will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the FCC's role to determine whether the factual record supports the conclusion that particular requirements of Section 271 have been met.⁹ The FCC has relied heavily on the investigation of a state commission where that examination was thorough and well documented.

Section 271 requires various findings be made before approving the entry of a BOC. To be successful, a BOC must first demonstrate, with respect to each state for which it seeks authorization, that it satisfies the requirements of either

⁷ *Id.* § 271(d)(2)(B).

⁸ See *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3962, para. 20 (1999) (*Bell Atlantic New York Order*), *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000); *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended*, CC Docket No. 97-137, 12 FCC Rcd 20543, 20559-60 (1997) (*Ameritech Michigan Order*). As the D.C. Circuit has held, "[a]lthough the FCC must consult with the state commissions, the statute does not require the FCC to give State Commissions' views any particular weight." *SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998).

⁹ *Ameritech Michigan Order*, 12 FCC Rcd at 20560; *SBC Communications v. FCC*, 138 F.3d at 416-17.

Section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).¹⁰ In order to obtain authorization under Section 271, the BOC must also show that: (1) it has “fully implemented the competitive checklist” contained in Section 271(c)(2)(B);¹¹ (2) the requested authorization will be carried out in accordance with the requirements of Section 272;¹² and (3) the BOC’s entry into the in-region interLATA market is “consistent with the public interest, convenience, and necessity.”¹³ The statute specifies that, unless the FCC finds that each of these criteria have been satisfied, the FCC “shall not approve” the requested authorization.¹⁴

IV. PROCEDURAL AND ANALYTICAL FRAMEWORK

The FCC evaluates a BOC applicant's compliance with the competitive checklist, as developed in the FCC's local competition rules and orders in effect at the time the application is filed to determine whether the prerequisites for entry into the long distance market have been met. The FCC has described how it

¹⁰ 47 U.S.C. § 271(d)(3)(A).

¹¹ *Id.* §§ 271(c)(2)(B), 271(d)(3)(A)(i).

¹² *Id.* § 272; see *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), *recon.*, Order on Reconsideration, 12 FCC Rcd 2297 (1997), *review pending sub nom.*, *SBC Communications v. FCC*, No. 97-1118 (D.C. Cir., filed Mar. 6, 1997) (held in abeyance pursuant to court order filed May 7, 1997), *remanded in part sub nom.*, *Bell Atlantic Telephone Companies v. FCC*, No. 97-1067 (D.C. Cir., filed Mar. 31, 1997), *on remand*, Second Order on Reconsideration, FCC 97-222 (rel. June 24, 1997), *petition for review denied sub nom. Bell Atlantic Telephone Companies v. FCC*, 113 F.3d 1044 (D.C. Cir. 1997); *Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539 (1996).

¹³ 47 U.S.C. § 271(d)(3)(C).

¹⁴ *Id.* § 271(d)(3); see *SBC Communications, Inc. v. FCC*, 138 F.3d at 416.

considers the evidence of compliance that the BOC presents in its application in its orders regarding previous applications.

As part of the determination that a BOC has satisfied the requirements of Section 271, the FCC considers whether the BOC has fully implemented the competitive checklist in subsection (c)(2)(B), and has indicated the BOC at all times bears the burden of proof of compliance with Section 271, even if no party challenges its compliance with a particular requirement.¹⁵ In demonstrating its compliance, the FCC has stated a BOC must show that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist items in quantities that competitors may reasonably demand and at an acceptable level of quality.¹⁶ In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.¹⁷ By its June 10, 2002, updated SGAT filing, Qwest has met this requirement in Iowa.

¹⁵ See *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance; Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd at 18374, para. 46 (2000) (*SWBT Texas Order*); *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

¹⁶ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3973-74, para. 52.

¹⁷ See 47 U.S.C. § 271(c)(2)(B)(i), (ii).

Previous FCC orders addressing Section 271 applications have elaborated on this nondiscrimination standard.¹⁸ First, for those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in “substantially the same time and manner” as it provides to itself.¹⁹ The ROC OSS Final Report, released May 28, 2002, by KPMG and HP included some exceptions that Qwest had elected to accept as “closed/unresolved.”

Qwest filed a summary with the IUB of the exceptions and observations that it had elected to accept with the “closed/unresolved” notation. Comments were sought and received by interested participants. The IUB determined that in each situation, the exceptions that had been detailed were not of such significance as to preclude a showing of compliance by Qwest.²⁰

The determination of whether the statutory standard is met is ultimately a judgment the FCC must make based on its expertise in promoting competition in

¹⁸ See *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd at 6250-51, paras. 28-29 (2001) (*SWBT Kansas/Oklahoma Order*); *Bell Atlantic New York Order*, 15 FCC Rcd at 3971-72, paras. 44-46.

¹⁹ *SWBT Texas Order*, 15 FCC Rcd at 18373, para. 44; *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44.

²⁰ See Conditional Statement Regarding Qwest Communications' OSS Evaluation and Order Closing Inquiry Docket, IUB Docket Nos. INU-00-2 and NOI-98-1, issued June 10, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 46)

local markets and in telecommunications regulation generally.²¹ No specific objective criteria for what constitutes “substantially the same time and manner” or a “meaningful opportunity to compete” has been established by the FCC.²² The FCC has made it clear that it will look at each application on a case-by-case basis, considering the totality of the circumstances, including the origin and quality of the information in the record, in determining whether the nondiscrimination requirements of the Act have been met.

The FCC has found that performance measurements provide valuable evidence regarding a BOC’s compliance or noncompliance with individual checklist items. In its *prima facie* case in the initial application, Qwest must:

- provide sufficient performance data to support its contention that the statutory requirements are satisfied;
- identify the facial disparities between the applicant’s performance for itself and its performance for competitors;
- explain why those facial disparities are anomalous, caused by forces beyond the applicant’s control (e.g., competing carrier-caused errors), or have no meaningful adverse impact on a competing carrier’s ability to obtain and serve customers; and,
- provide the underlying data, analysis, and methodologies necessary to enable the FCC and commenters meaningfully to evaluate and contest the validity of the applicant’s explanations for performance disparities, including, for example, carrier specific carrier-to-carrier performance data.

²¹ *SWBT Texas Order*, 15 FCC Rcd at 18374, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

²² *Id.*

The FCC has explained in prior orders that parity and benchmark standards established by state commissions do not represent absolute maximum or minimum levels of performance necessary to satisfy the competitive checklist. Rather, where these standards are developed through open proceedings with input from both the incumbent and competing carriers, these standards can represent informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time and manner, or in a way that provides them a meaningful opportunity to compete.²³

The ROC OSS testing project included a Technical Advisory Group (TAG) comprised of staff members from the thirteen participating State Commissions, as well as representatives from Qwest and many of the competitive local exchange companies (CLECs). The TAG was responsible for:

- developing the principles that were applied during the development and conduct of the collaborative test;
- developing performance measures that were used during the test; and;
- providing input on various decisions regarding test design and conduct.

Results from the ROC OSS test were released on a progressive basis, as discrete reports, at the completion of testing for specific sections of the Master Test Plan. These early releases were considered "preliminary" until they were

²³ See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6252, para. 31; *SWBT Texas Order*, 15

published in the final report, allowing all the participants involved in the test to spread the review and assimilation of the test results over a longer period of time rather than a short timeframe at the end of the testing process.

When certain CLECs expressed concern about the accuracy of Qwest's reported performance results as the results related to service the CLECs were receiving, the ROC determined it would be advantageous to conduct a data reconciliation audit to test the concerns. Liberty was instructed to conduct a data validation to resolve any debates concerning the accuracy of performance data emanating from particular ROC Performance Indicator Definitions (PIDs).

Three CLECs participated in the study, AT&T, WorldCom, and Covad. These CLECs, Qwest and Liberty, spent significant time and effort resolving the specific scope of the performance measures to be included in the data reconciliation. Liberty determined the appropriate objective of the reconciliation was to answer the following question:

Does any of the information provided by the participating CLECs demonstrate inaccuracy in Qwest's reporting of performance results under the measures defined in the Performance Indicator Definitions (PID)?

Liberty filed a copy of its report with the IUB on September 25, 2001. Liberty noted in its report that the CLECs did not always clearly identify the discrepancies or the evidence upon which they based their concerns and

requested additional information and clarifications from the CLECs. However, the bulk of the information used in the reconciliation came from Qwest.

During its audit, Liberty issued one Exception and thirteen Observations based on its review. All fourteen discrepancies have been addressed to the satisfaction of Liberty and the final resolution was to close each exception and observation.

Liberty found that the CLECs captured data and accounted for information related to Qwest's wholesale performance measures differently from Qwest. Liberty concluded the CLECs recorded data in ways that best suited their own operational and management needs. There were instances where the CLEC did not have the systems required to track performance measure results at the level of detail required of Qwest, in addition to the constraint of not having personnel familiar with Qwest's systems.

In filings with the IUB, Qwest indicated it was already aware of some of the problems reported by Liberty. In those instances, the reconciliation process documented the resolution and made them known to interested participants. The process-type errors had solutions available through computer programming or revised data collection methods. The human errors were deemed to be correctable through the use of new job tools, revised methods and checks, and additional training. Liberty concluded that these human errors were not at such a level as to adversely impact the performance reports. Liberty did not detect any evidence that Qwest was attempting to manipulate data. Liberty concluded that

Qwest's performance reporting was accurately and reliably reporting its actual performance.

The reconciliation process was a long and arduous undertaking by all participants and appears to have resulted in all interested observers being assured that Qwest's performance reporting is accurate and reliable. The process involved the ROC TAG reviewing the exception and observations Liberty filed relating to the data reconciliation audit, and noting the changes Qwest implemented, before accepting Liberty's recommendation to close all of these matters. Although Iowa specific data was not included in the data reconciliation, the IUB accepted the reports filed by Liberty as adequate without requiring a separate data reconciliation of Iowa data.²⁴

IV. COMPLIANCE WITH ENTRY REQUIREMENTS — SECTIONS 271(C)(1)(A) & 271(C)(1)(B)

In order for the FCC to approve Qwest's application to provide in-region, interLATA services, Qwest must first demonstrate that it satisfies the requirements of either Section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).²⁵ To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of “telephone exchange service . . . to residential and business subscribers.”²⁶

²⁴ See Conditional Statement Regarding Data Reconciliation of Performance Measures in the ROC OSS Test, IUB Docket No. INU-00-2, issued June 6, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 16)

²⁵ See 47 U.S.C. § 271(d)(3)(A).

²⁶ *Id.*

Qwest presented evidence in IUB Docket No. INU-00-2 that as of April 30, 2001, it had entered into 94 binding and approved interconnection agreements in Iowa.²⁷ No participant contested this aspect of Qwest's Track A compliance.

Qwest also offered evidence that, as of April 30, 2001, it was providing access and interconnection to 14 Iowa CLECs. As of the same date, it had leased 138,192 unbundled loops to competitors.²⁸ No party contested this aspect of Qwest's Track A compliance.

The Act states that “such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier.”²⁹ The FCC concluded in the *Ameritech Michigan Order* that Section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers.³⁰

Iowa is able to rely on the actual numbers provided by one CLEC to meet the Section 271(c)(1)(A) requirement. The confidential record indicates that McLeodUSA is providing service to both residential and business customers at

²⁷ Exhibit S8-QWE-DLT-9 (exhibit numbers refer to exhibits to IUB Docket No. INU-00-2).

²⁸ Exhibit S8-QWE-DLT-9.

²⁹ See 47 U.S.C. § 271(d)(3)(A).

³⁰ See *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, As Amended, To Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-137, 12 FCC Rcd at 20589, para. 85 (1997) (*Ameritech Michigan Order*); see also *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket

more than "de minimis" levels. Alternatively, even without the specific actual numbers found in the confidential record, customer counts of multiple CLECs would be sufficient to meet this requirement in Iowa.³¹

As an alternative to Track A, Section 271(c)(1)(B) permits BOCs to obtain authority to provide in-region, interLATA services if, after 10 months from the date of enactment, no facilities-based provider, as described in subparagraph (A), has requested the access and interconnection arrangements described therein (referencing one or more binding agreements approved under Section 252), but the state has approved an SGAT that satisfies the competitive checklist of subsection (c)(2)(B). Under Section 271(d)(3)(A)(ii), the FCC shall not approve such a request for in-region, interLATA service unless the BOC demonstrates that, "with respect to access and interconnection generally offered pursuant to [an SGAT], such statement offers all of the items included in the competitive checklist."³² Track B, however, is not available to a BOC if it has already received a request for access and interconnection from a prospective competing provider of telephone exchange service.³³ For states such as Iowa, Track B does not apply because competitors already exist.

No. 98-121, 13 FCC Rcd at 20633-35, paras. 46-48 (1998) (*Second BellSouth Louisiana Order*).

³¹ See Conditional Statement Regarding Public Interest and Track A, IUB Docket No. INU-00-2, pp. 11-13, issued January 25, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 6)

³² 47 U.S.C. § 271(d)(3)(A)(ii).

³³ See *Ameritech Michigan Order*, 12 FCC Rcd at 20561-62, para. 34. Nevertheless, the above-mentioned foreclosure of Track B as an option is subject to limited exceptions. See 47 U.S.C. § 271(c)(1)(B); see also *Ameritech Michigan Order*, 12 FCC Rcd at 20563-64, paras. 37-38.

V. COMPLIANCE WITH THE COMPETITIVE CHECKLIST – SECTION 271(c)(2)(B)

A. Checklist Item 1– Interconnection³⁴

Section 271(c)(2)(B)(i) of the Act requires a Section 271 applicant to provide “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).”³⁵ Section 251(c)(2) imposes a duty on incumbent local exchange companies (LECs) “to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network . . . for the transmission and routing of telephone exchange service and exchange access.”³⁶ In the *Local Competition First Report and Order*, the FCC concluded that interconnection referred “only to the physical linking of two networks for the mutual exchange of traffic.”³⁷ Section 251 contains three requirements for the provision of interconnection.

First, an incumbent LEC must provide interconnection “at any technically feasible point within the carrier’s network.”³⁸ In the proceeding before the IUB, the CLECs argued that Qwest must allow interconnection at the access tandem.

³⁴ A general discussion of the IUB analysis of impasse issues related to interconnection can be found at pages 4-15 of its Conditional Statement Regarding May 15, 2001, Report, issued October 12, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 3)

³⁵ 47 U.S.C. § 271(c)(2)(B)(i); see *Bell Atlantic New York Order*, 15 FCC Rcd at 3977-78, para. 63; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640, para. 61; *Ameritech Michigan Order*, 12 FCC Rcd at 20662, para. 222.

³⁶ 47 U.S.C. § 251(c)(2)(A).

³⁷ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15590, para. 176 (1996) (*Local Competition First Report and Order*). Transport and termination of traffic are therefore excluded from the FCC’s definition of interconnection. See *id.*

Originally, Qwest was opposed to the use of its access tandem for routing local traffic, citing the possibility that to do so could strand capacity on its local network and create capacity shortfalls on its switched access network. However, when Qwest filed its pre-report brief, it proposed new SGAT language allowing CLECs to interconnect at the access tandem – with certain limitations. Ultimately, the IUB ordered Qwest to include language in its SGAT that made it mandatory for CLECs to order direct trunks to the Qwest local tandem once the DS1 threshold has been reached, but directed that the provision also provide that additional costs of the trunk group be offset by other network savings.³⁹

Second, an incumbent LEC must provide interconnection that is “at least equal in quality to that provided by the local exchange carrier to itself.”⁴⁰ Finally, the incumbent LEC must provide interconnection “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of the agreement and the requirements of [Section 251] and Section 252.”⁴¹

In the *Local Competition First Report and Order*, the FCC concluded that the requirement to provide interconnection on terms and conditions that are “just, reasonable, and nondiscriminatory” means that an incumbent LEC must provide interconnection to a competitor in a manner no less efficient than the way in

³⁸ 47 U.S.C. § 251(c)(2)(B). In the *Local Competition First Report and Order*, the FCC identified a minimum set of technically feasible points of interconnection. See *Local Competition First Report and Order*, 11 FCC Rcd at 15607-09, paras. 204-11.

³⁹ Conditional Statement Regarding May 15, 2001, Report, IUB Docket No. INU-00-2, pp. 9-11, issued October 12, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 3)

⁴⁰ 47 U.S.C. § 251(c)(2)(C).

which the incumbent LEC provides the comparable function to its own retail operations.⁴² The FCC's rules interpret this obligation to include, among other things, the incumbent LEC's installation time for interconnection service⁴³ and its provisioning of two-way trunking arrangements.⁴⁴ Similarly, repair time for troubles affecting interconnection trunks is useful for determining whether a BOC provides interconnection service under "terms and conditions that are no less favorable than the terms and conditions" the BOC provides to its own retail operations.⁴⁵

Competing carriers may choose any method of technically feasible interconnection at a particular point on the incumbent LEC's network.⁴⁶ Incumbent LEC provision of interconnection trunking is one common means of interconnection. The FCC has determined that technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point

⁴¹ *Id.* § 251(c)(2)(D).

⁴² *Local Competition First Report and Order*, 11 FCC Rcd at 15612, para. 218; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65.

⁴³ 47 C.F.R. § 51.305(a)(5).

⁴⁴ The FCC's rules require an incumbent LEC to provide two-way trunking upon request, wherever two-way trunking arrangements are technically feasible. 47 C.F.R. § 51.305(f); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3978-79, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65; *Local Competition First Report and Order*, 11 FCC Rcd 15612-13, paras. 219-20.

⁴⁵ 47 C.F.R. § 51.305(a)(5).

⁴⁶ *Local Competition First Report and Order*, 11 FCC Rcd at 15779, paras. 549-50; *see Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 61.

arrangements.⁴⁷ The provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist.⁴⁸ In addressing impasse issues related to collocation, the IUB noted that many of the issues originally raised had been settled through the workshop process. It was also apparent from the record that Qwest was providing collocation. The impasse issues were primarily related to specific language to be included in Qwest's SGAT related to collocation.⁴⁹

In the *Advanced Services First Report and Order*, the FCC revised its collocation rules to require incumbent LECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings.⁵⁰ In response to a remand from the D.C. Circuit, the FCC adopted the *Collocation Remand Order*, establishing revised criteria for equipment for which incumbent LECs must permit collocation, requiring incumbent LECs to provide cross-connects between collocated carriers, and establishing principles for physical

⁴⁷ 47 C.F.R. § 51.321(b); *Local Competition First Report and Order*, 11 FCC Rcd at 15779-82, paras. 549-50; see also *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 62.

⁴⁸ 47 U.S.C. § 251(c)(6) (requiring incumbent LECs to provide physical collocation); *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 61-62.

⁴⁹ A general discussion of the IUB analysis of impasse issues relating to collocation can be found at pages 15-31 of its Conditional Statement Regarding May 15, 2001, Report, IUB Docket No. INU-00-2, issued October 12, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 3)

⁵⁰ *Deployment of Wireline Services offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4784-86, paras. 41-43 (1999), *aff'd in part and vacated and remanded in part sub nom. GTE Service Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000), *on recon., Collocation Reconsideration Order*, 15 FCC Rcd 17806 (2000); *on remand, Deployment of Wireline Services Offering Advanced*

collocation space and configuration.⁵¹ To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are “just, reasonable, and nondiscriminatory” in accordance with Section 251(c)(6) and the FCC’s implementing rules.⁵²

The IUB considered an impasse issue where CLECs questioned whether the bona fide request (BFR) process was appropriate for ordering new collocation services. The BFR process is used to create a clear agreement of the terms and conditions associated with a new product or service.

The language adopted by the IUB for inclusion in Qwest's Iowa SGAT allows a CLEC to immediately order new services under terms initially prescribed by Qwest, allowing for a retroactive adjustment of terms and conditions if subsequent changes are agreed to through negotiation or Board order.⁵³ Overall, the IUB concluded that Qwest was in compliance with the statutory requirements of checklist item 1 – interconnection.⁵⁴

Telecommunications Capability, Fourth Report and Order, 16 FCC Rcd 15435 (2001) (*Collocation Remand Order*), *petition for recon. pending*.

⁵¹ See *Collocation Remand Order*, 16 FCC Rcd at 15441-42, para. 12.

⁵² *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20643, para. 66; *BellSouth Carolina Order*, 13 FCC Rcd at 649-51, para. 62.

⁵³ See Conditional Statement Regarding May 15, 2001, Report, IUB Docket No. INU-00-2, pp. 15-17. Issued October 12, 2001.

⁵⁴ *Id.*

Additionally, checklist item 1 requires a BOC to provide “interconnection in accordance with the requirements of section 252(d)(1).”⁵⁵ Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.⁵⁶ The FCC’s pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation based on total element long-run incremental cost (TELRIC).⁵⁷

The FCC has indicated that to the extent pricing disputes exist, it will not duplicate the work of the state commissions. Although the FCC has an independent statutory obligation to ensure compliance with the checklist, Section 271 does not compel preemption of the orderly disposition of intercarrier disputes by the state commissions, particularly now that the Supreme Court has restored the FCC’s pricing jurisdiction and has thereby directed the state commissions to follow FCC pricing rules in their disposition of those disputes.⁵⁸

The FCC has determined that rates contained within an approved Section 271 application, including those that are interim, are reasonable starting points

⁵⁵ 47 U.S.C. § 271(c)(2)(B)(i) (emphasis added).

⁵⁶ *Id.* § 252(d)(1).

⁵⁷ See 47 C.F.R. §§ 51.501-07, 51.509(g); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

⁵⁸ *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 377-86.

for interim rates for the same carrier in an adjoining state.⁵⁹ The FCC has indicated, however, that it is preferable to analyze a Section 271 application on the basis of rates derived from a permanent rate proceeding.⁶⁰

The Colorado Public Utilities Commission recently completed a comprehensive proceeding to establish TELRIC-based unbundled network element (UNE) rates. Qwest chose to adjust its core UNE rates in Iowa in a manner designed to comply with the FCC's benchmarking analysis, using Colorado as the benchmark state. According to the declaration of Qwest witness Jerrold L. Thompson the Iowa rates were developed using the TELRIC-compliant rates adopted by the Colorado Commission as a starting point. Those rates were adjusted using the FCC's universal service synthesis model, the same "benchmark" comparative methodology utilized by the FCC in its orders on the Section 271 applications for Kansas/Oklahoma, Arkansas/Missouri, Massachusetts, and Pennsylvania.⁶¹

On May 16, 2002, Qwest filed a proposed tariff, identified as Docket No. TF-02-202, with the IUB designed to reduce certain wholesale rates. An additional revision was filed on May 21, 2002. Qwest requested an effective date of June 7, 2002. These rates were expected to be included in any filing that Qwest would make to the FCC for approval, pursuant to 47 U.S.C. § 271, of Qwest's provision of interLATA service originating in region. Qwest filed a notice

⁵⁹ *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6359-60, para. 239.

of updated SGAT with the IUB, which included these new wholesale rates on May 24, 2002. In its "Order Approving Tariff," issued June 7, 2002, the IUB noted:

It appears that the newly-proposed rates for UNEs and local interconnection service (LIS) elements, are all less than, or equal to, rates previously approved by the IUB, with the exception of non-recurring charges for DS3-Type facilities. The lower rates would, as noted by HickoryTech and NexGen, provide an immediate benefit to those CLECs currently purchasing these services from Qwest. Further, there is no apparent harm in permitting these lower rates to become effective as of June 7, 2002.⁶²

B. Checklist Item 2 – Unbundled Network Elements

1. Access to Operations Support Systems

Although incumbent LECs use a variety of systems, databases, and personnel (collectively referred to as operations support systems or OSS) to provide service to their customers, the FCC consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.⁶³ New entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to

⁶⁰ See *Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 260.

⁶¹ See Qwest Application, Declaration of Jerrold L. Thompson, Iowa Rates, p. 31.

⁶² Order Approving Tariff, Iowa Utilities Board Docket No. TF-02-202, p. 4, issued June 7, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 27)

⁶³ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83; *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In Region, InterLATA Services in South Carolina*, CC Docket No. 97-208,

maintain and repair network facilities, and to bill customers.⁶⁴ Without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.⁶⁵

The FCC must determine whether Qwest offers nondiscriminatory access to OSS functions. Section 271(c)(2)(B)(ii) requires the provision of "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."⁶⁶

The FCC has determined that access to OSS functions falls squarely within an incumbent LEC's duty under Section 251(c)(3) to provide UNEs under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under Section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable.⁶⁷ The IUB found that each of the recommendations from Liberty regarding resale requirements were reasonable, noting that no briefs or comments were filed objecting to any of the proposed resolutions for impasse issues.⁶⁸

Memorandum Opinion and Order, 13 FCC Rcd at 547-48, 585 (1997) (*BellSouth South Carolina Order*); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653.

⁶⁴ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83.

⁶⁵ *Id.*

⁶⁶ 47 U.S.C. § 271(c)(2)(B)(ii).

⁶⁷ *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 84.

⁶⁸ See Conditional Statement Regarding May 15, 2001, Report, Iowa Utilities IUB Docket No. INU-00-2, pp. 36-38, issued October 12, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 3)

As part of its statutory obligation to provide nondiscriminatory access to OSS functions, Qwest must provide access that sufficiently supports each of the three modes of competitive entry envisioned by the 1996 Act⁶⁹ – competitor-owned facilities, UNEs, and resale.⁷⁰ For OSS functions that are analogous to those that Qwest provides to itself, its customers or its affiliates, the nondiscrimination standard requires Qwest to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness.⁷¹ Access must be provided that permits competing carriers to perform these functions in “substantially the same time and manner” as Qwest.⁷² The FCC has recognized in prior orders that there may be situations in which a BOC contends that, although equivalent access has not been achieved for an analogous function, the access that it provides is nonetheless nondiscriminatory within the meaning of the statute.⁷³

For OSS functions that have no retail analogue, access “sufficient to allow an efficient competitor a meaningful opportunity to compete,” must be offered.⁷⁴ In assessing whether the quality of access affords an efficient competitor a meaningful opportunity to compete, the FCC has indicated it will examine, in the

⁶⁹ See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁷⁰ *Bell Atlantic New York Order*, 15 FCC Rcd at 3991, para. 85.

⁷¹ *Id.*

⁷² *Id.* For example, the FCC would not deem an incumbent LEC to be providing nondiscriminatory access to OSS if limitations on the processing of information between the interface and the back office systems prevented a competitor from performing a specific function in substantially the same time and manner as the incumbent performs that function for itself.

⁷³ See *Id.*

first instance, whether specific performance standards exist for those functions.⁷⁵

In particular, the FCC will consider whether appropriate standards for measuring OSS performance have been adopted by the relevant state commission or agreed upon by the BOC in an interconnection agreement or during the implementation of such an agreement.⁷⁶ Where such performance standards exist, the FCC will evaluate whether the BOC's performance is sufficient to allow an efficient competitor a meaningful opportunity to compete.⁷⁷

The FCC analysis regarding nondiscrimination for each OSS function involves using a two-step approach. First, the determination of "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."⁷⁸ The FCC next assesses "whether the OSS functions that the BOC has deployed are operationally ready, as a

⁷⁴ *Id.* at 3991, para. 86.

⁷⁵ *Id.*

⁷⁶ *Id.* As a general proposition, specific performance standards adopted by a state commission in an arbitration decision would be more persuasive evidence of commercial reasonableness than a standard unilaterally adopted by the BOC outside of its interconnection agreement. *Id.* at 20619-20.

⁷⁷ *See id.* at 3991-92, para. 86.

⁷⁸ *Id.* at 3992, para. 87; *Ameritech Michigan Order*, 12 FCC Rcd at 20616; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654; *BellSouth South Carolina Order*, 13 FCC Rcd at 592-93. In making this determination, the FCC "consider[s] all of the automated and manual processes a BOC has undertaken to provide access to OSS functions," including the interface (or gateway) that connects the competing carrier's own operations support systems to the BOC; any electronic or manual processing link between that interface and the BOC's OSS (including all necessary back office systems and personnel); and, all of the OSS that a BOC uses in providing network elements and resale services to a competing carrier.

practical matter.”⁷⁹ Although not a prerequisite, the FCC continues to encourage the use of industry standards as an appropriate means of meeting the needs of a competitive local exchange market.⁸⁰

The FCC also examines performance measurements and other evidence of commercial readiness to ascertain whether the BOC’s OSS is handling current demand and will be able to handle reasonably foreseeable future volumes.⁸¹ The most probative evidence that OSS functions are operationally ready is actual commercial usage.⁸² Absent sufficient and reliable data on commercial usage, the FCC will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC’s OSS.⁸³ Although the FCC does not require OSS testing, it has noted that a persuasive test provides it with an objective means by which to evaluate a BOC’s OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC’s evidence of actual commercial usage is weak or is otherwise challenged by competitors. The FCC has made it clear that the persuasiveness of a third-party review, however, is dependent upon the qualifications, experience, and independence of the third

Ameritech Michigan Order, 12 FCC Rcd at 20615; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654 n.241.

⁷⁹ See *Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.

⁸⁰ See *Id.*

⁸¹ *Id.* at 3993, para. 89.

⁸² *Id.*

⁸³ *Id.*

party and the conditions and scope of the review itself.⁸⁴ A review that is limited in scope or depth or is not independent and blind, will be given minimal weight.

As previously noted, the IUB participated in the ROC thirteen-state testing of Qwest's OSS. On May 28, 2002, KPMG Consulting issued its Final Report on the test of Qwest's OSS. The test results reported and analyzed in the Final Report conclusively demonstrate that Qwest is capable of providing CLECs with non-discriminatory access to its OSS consistent with the requirements of Section 271.⁸⁵

The test was divided into four areas, including 1) pre-order, order, and provisioning; 2) billing; 3) maintenance and repair; and, 4) relationship management and infrastructure (including change management and technical assistance). Each of these areas tested included a capacity management component and was evaluated through a series of associated transaction-based and operational analysis tests.

As the test administrator, KPMG executed a total of 28 associated tests, consisting of approximately 685 applicable test points with defined success criteria. Additionally, there were 26 test points that were considered "diagnostic," and without defined success criteria. The test employed a military-style "test until

⁸⁴ See *id.*; *Ameritech Michigan Order*, 12 FCC Rcd at 20659 (emphasizing that a third-party review should encompass the entire obligation of the incumbent LEC to provide nondiscriminatory access, and, where applicable, should consider the ability of actual competing carriers in the market to operate using the incumbent's OSS access).

you pass" philosophy, which provided for multiple retests as necessary to ensure that Qwest met each of the applicable test points.

The test results were generally assessed using performance indicator definitions (PIDs) developed collaboratively by the TAG. These PIDs were also used to assess Qwest's commercial performance on a monthly basis. As previously noted, a data reconciliation audit was performed by Liberty to ascertain the accuracy of the PIDs and the reporting of Qwest's related commercial data.

The ROC test of Qwest's OSS evaluated every aspect of Qwest's OSS that affects local competition. In addition to Qwest and state regulatory personnel, numerous CLECs and other parties collaborated on and evaluated every aspect of the test's design, implementation, and execution through weekly meetings and conference calls of the TAG, lasting nearly 100 weeks. Test Issues Logs were released on a weekly basis to assist with the identification and resolution of concerns that arose during the test.

More than thirty additional formal meetings were conducted for TAG members to discuss technical matters regarding a variety of issues, including test beds, billing, test volumes, and volunteer test lines. Additionally, periodic multi-day workshops allowed participants and test vendors to review the principles and scope of the test, test design, and performance measurement issues.

⁸⁵ See Conditional Statement Regarding Qwest Communications' OSS Evaluation and Order

Following the release of the draft report, three vendor technical conferences were held, allowing a review of results, test processes, and providing an opportunity for all participants to ask questions.

2. Change Management Process

Competing carriers need information about, and specifications for, an incumbent's systems and interfaces to develop and modify their systems and procedures to access the incumbent's OSS functions.⁸⁶ Thus, in order to demonstrate that it is providing nondiscriminatory access to its OSS, Qwest must first demonstrate that it "has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."⁸⁷ By showing that it adequately assists competing carriers to use available OSS functions, a BOC provides evidence that it offers an efficient competitor a meaningful opportunity to compete.⁸⁸ The FCC has indicated that it will give substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time.⁸⁹

Closing Inquiry Docket, IUB Docket No. INU-00-2, issued June 10, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 46)

⁸⁶ *Bell Atlantic New York Order*, 15 FCC Rcd at 3999-4000, para. 102; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6279 n.197; *BellSouth South Carolina Order*, 13 FCC Rcd at 625 n.467; *Ameritech Michigan Order*, 12 FCC Rcd at 20617 n.334; *Local Competition Second Report and Order*, 11 FCC Rcd at 19742.

⁸⁷ *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102.

⁸⁸ *Id.* at 3999-4000, para. 102

⁸⁹ *Id.* at 4000, para. 102.

The change management process refers to the methods and procedures employed by the BOC to communicate with competing carriers regarding the performance of, and changes in, the BOC's OSS⁹⁰ and may include updates to existing functions that impact competing carrier interface(s) upon a BOC's release of new interface software; technology changes that require competing carriers to meet new technical requirements upon a BOC's software release date; additional functionality changes that may be used at the competing carrier's option, on or after a BOC's release date for new interface software; and, changes that may be mandated by regulatory authorities.⁹¹ It is clear that without a change management process in place, substantial costs can be imposed on competing carriers simply by changes made by a BOC to its systems and interfaces without providing adequate testing opportunities and accurate and timely notice and documentation of the changes.⁹² Change management problems can impair a competing carrier's ability to obtain nondiscriminatory access to UNEs, and hence compliance with Section 271(2)(B)(ii).⁹³

In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, the FCC must first assess whether the plan is adequate. In making this determination, it assesses whether the evidence demonstrates: (1) that information relating to the change

⁹⁰ *Id.* at 4000, para. 103.

⁹¹ *Id.*

⁹² *Id.* at 4000, para. 103.

⁹³ *Id.*

management process is clearly organized and readily accessible to competing carriers;⁹⁴ (2) that competing carriers had substantial input in the design and continued operation of the change management process;⁹⁵ (3) that the change management plan defines a procedure for the timely resolution of change management disputes;⁹⁶ (4) that a stable testing environment mirroring production is available;⁹⁷ and, (5) that the documentation the BOC makes available for the purpose of building an electronic gateway can be given effect.⁹⁸ After determining whether the BOC's change management plan is adequate, the FCC evaluates whether the BOC has demonstrated a pattern of compliance with this plan.⁹⁹

Parts of the CMP were tested in the ROC OSS test. The following excerpt appears in the "Evaluation Overview" section of the OSS evaluation report submitted by KPMG Consulting, Inc. and Hewlett-Packard Consulting and filed with the Board on May 29, 2002, by Qwest:

The Change Management test involved various aspects of the processes, methods, procedures, and systems that Qwest has in place to develop, publicize, evaluate, and implement changes to Qwest's

⁹⁴ *Id.* at 4002, para. 107.

⁹⁵ *Id.* at 4000, para. 104.

⁹⁶ *Id.* at 4002, para. 108.

⁹⁷ *Id.* at 4002-03, paras. 109-10.

⁹⁸ *Id.* at 4003-04, para. 110. In the *Bell Atlantic New York Order*, the FCC used these factors in determining whether Bell Atlantic had an adequate change management process in place. See *id.* at 4004, para. 111. The FCC left open the possibility, however, that a change management plan different from the one implemented by Bell Atlantic may be sufficient to demonstrate compliance with the requirements of Section 271. *Id.*

⁹⁹ *Id.* at 3999, para. 101, 4004-05, para. 112.

Wholesale Operational Support System (OSS) interfaces and business processes.

Beginning in July 2001, Qwest began replacing its former Co-provider Industry Change Management Process (CICMP) with a new Change Management Process (CMP). CMP distinguishes between the Systems CMP that governs changes to electronic interfaces, and the Product/Process CMP that governs changes to wholesale products and processes.

Many aspects of the New CMP are documented and currently operational. Many of the evaluation criteria associated with these aspects of the Change Management test were satisfied.

However, Qwest and CLECs are still working on other important aspects of CMP, which were either too new, or not yet mature enough to evaluate. Accordingly, KPMG Consulting was not able to verify that Qwest:

- adheres to the new System CMP's procedures and systems that track information such as descriptions of proposed changes, key notification dates, and change status;
- adheres to the new System CMP's schema for Change Request (CR) prioritization and severity coding;
- complies with notification intervals and documentation release requirements of the new System CMP;
- has adequately defined and documented all aspects of the new Product/Process CMP;
- has fully implemented procedures and systems in place in the new Product/Process CMP to track information such as descriptions of proposed changes, key notification dates, and change status;

- adheres to the new Product/Process CMP schema for the prioritization and for severity coding; and,
- complies with notification intervals and documentation release requirements of the new Product/Process CMP.¹⁰⁰

Because several of the tests relating to CMP were concluded with a result of "unable to determine," Qwest argued that the unresolved tests were inconsequential to Section 271 compliance.¹⁰¹

The CLECs argued before the IUB that Qwest's noncompliance fell into four categories: 1) the information relating to the remaining real "core" CMP documentation is not yet clearly organized and readily accessible, not even complete; 2) Qwest does not provide a stable testing environment that mirrors production; 3) Qwest has not demonstrated a pattern of compliance or adherence to its CMP over time; and, 4) Qwest's work to make its technical publications and PCAT consistent with the SGAT is incomplete.

For a complete discussion and analysis of each of the arguments made by CLECs regarding Qwest's compliance with CMP requirements see, "Conditional Statement Regarding Change Management Process Compliance," issued June 6, 2002. The IUB noted that the CMP is described in section 12.2.6 and Exhibit

¹⁰⁰ Qwest Communications OSS Evaluation, Final Report, Version 2.0, p. 17.

¹⁰¹ Qwest Corporation's Summary of Closed/Unresolved Observations and Exceptions in the ROC OSS Test and Qwest Corporation's Comments Demonstrating Satisfaction of the FCC's Section 271 Change Management Evaluation Criteria, Docket No, INU-00-2, filed May 3, 2002.

G of Qwest's SGAT. The CMP provides a forum for CLECs and Qwest to discuss and implement changes to Qwest's products, technical documentation, OSS interfaces, and processes that would result in changes to Qwest or CLEC operating procedures. Qwest and CLECs continue to meet to work on the redesign of Qwest's CMP. As changes to CMP occur, they are to be reflected in Exhibit G. Qwest maintains the most recent version of Exhibit G on its CMP website.¹⁰² Qwest continues to file monthly CMP status reports on meetings held with CLECs to redesign CMP. The IUB concluded that Qwest satisfied the requirements related to its CMP.

3. UNE Combinations

In order to comply with the requirements of checklist item 2, Qwest must show that it is offering "[n]ondiscriminatory access to network elements in accordance with the requirements of Section 251(c)(3)."¹⁰³ Section 251(c)(3) requires an incumbent LEC to "provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory."¹⁰⁴ Section 251(c)(3) of the Act also requires incumbent LECs to provide UNEs in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.¹⁰⁵

¹⁰² <http://www.qwest.com/wholesale/cmp/whatiscmp.html>

¹⁰³ 47 U.S.C. § 271(c)(2)(B)(ii).

¹⁰⁴ *Id.* § 251(c)(3).

¹⁰⁵ *Id.*

In the *Ameritech Michigan Order*, the FCC emphasized that the ability of requesting carriers to use UNEs, as well as combinations of UNEs, is integral to achieving Congress' objective of promoting competition in local telecommunications markets.¹⁰⁶ Using combinations of UNEs provides a competitor with the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings in order to compete in the local telecommunications market.¹⁰⁷ The FCC has found that combining the incumbent's UNEs with a CLEC's own facilities encourages facilities-based competition and allows competing providers to provide a wide array of competitive choices.¹⁰⁸ Because the use of combinations of UNEs is an important strategy for entry into the local telecommunications market, as well as an obligation under the requirements of Section 271, the FCC examines Section 271 applications to determine whether competitive carriers are able to combine network elements as required by the Act and the FCC's regulations.¹⁰⁹

¹⁰⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20718-19; *BellSouth South Carolina Order*, 13 FCC Rcd at 646.

¹⁰⁷ *BellSouth South Carolina Order*, 13 FCC Rcd at 646; see also *Local Competition First Report and Order*, 11 FCC Rcd at 15666-68.

¹⁰⁸ *Bell Atlantic New York Order*, 15 FCC Rcd at 4077-78, para. 230.

¹⁰⁹ *Id.* The Supreme Court on May 13, 2002, upheld the FCC's combination rules finding that the requirement "is consistent with the Act's goals of competition and nondiscrimination, and imposing it is a sensible way to reach the result the statute requires." *Verizon v. FCC*, Nos. 00-511, 00-555, 00-587, 00-590, and 00-602, 2002 WL 970643 at *36 (Sup. Ct. May 13, 2002) (*Verizon v. FCC*).

The IUB found that Qwest has met all the requirements such that it is in compliance with the necessary elements of UNE combinations.¹¹⁰

C. Checklist Item 3 – Poles, Ducts, Conduits, and Rights of Way

Section 271(c)(2)(B)(iii) requires Qwest to provide “[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of Section 224.”¹¹¹ Section 224(f)(1) states that “[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.”¹¹² Notwithstanding this requirement, Section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, “where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.”¹¹³

¹¹⁰ For a comprehensive discussion and analysis of issues relating to Qwest's compliance with these requirements see, Conditional Statement Regarding August 20, 2001, Report, IUB Docket No. INU-00-2, issued December 21, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 5)

¹¹¹ 47 U.S.C. § 271(c)(2)(B)(iii). As originally enacted, Section 224 was intended to address obstacles that cable operators encountered in obtaining access to poles, ducts, conduits, or rights-of-way owned or controlled by utilities. The 1996 Act amended Section 224 in several important respects to ensure that telecommunications carriers as well as cable operators have access to poles, ducts, conduits, or rights-of-way owned or controlled by utility companies, including LECs. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20706, n.574.

¹¹² 47 U.S.C. § 224(f)(1). Section 224(a)(1) defines “utility” to include any entity, including a LEC, that controls “poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.” 47 U.S.C. § 224(a)(1).

¹¹³ 47 U.S.C. § 224(f)(2). In the *Local Competition First Report and Order*, the FCC concluded that, although the statutory exception enunciated in Section 224(f)(2) appears to be limited to utilities providing electrical service, LECs should also be permitted to deny access to their poles, ducts, conduits, and rights-of-way because of insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes, provided the assessment of

For each issue, where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the March 19, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 3 – Access to Poles, Ducts, Conduits, and Rights of Way. The IUB adopted each of the resolutions as recommended by Liberty in its report. Qwest, having incorporated the recommendations in its current filing, has met the requirements of this checklist item to the satisfaction of the IUB.¹¹⁴

D. Checklist Item 4 – Unbundled Local Loops

Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires Qwest to provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”¹¹⁵ The FCC has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. This definition includes different types of loops, including two-wire and four-wire analog voice-grade loops, and two-wire and

such factors is done in a nondiscriminatory manner. *Local Competition First Report and Order*, 11 FCC Rcd at 16080-81, paras. 1175-77.

¹¹⁴ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

¹¹⁵ 47 U.S.C. § 271(c)(2)(B)(iv).

four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.¹¹⁶

In order to establish that it is “providing” unbundled local loops in compliance with checklist item 4, Qwest is required to demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality, and that it provides nondiscriminatory access to unbundled loops.¹¹⁷

Qwest must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested. In order to provide the requested loop functionality, such as the ability to deliver xDSL services, Qwest has been required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities. Qwest is providing competitors with access to unbundled loops regardless of its use of digital loop carrier (DLC) technology or similar remote concentration devices for the particular loops sought by the competitor.

¹¹⁶ *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-67, n.301 (retaining definition of the local loop from the *Local Competition First Report and Order*, but replacing the phrase “network interconnection device” with “demarcation point,” and making explicit that dark fiber and loop conditioning are among the features, functions and capabilities of the loop).

¹¹⁷ *SWBT Texas Order*, 15 FCC Rcd at 18481-81, para. 248; *Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20637, para. 185.

On December 9, 1999, the FCC released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL).¹¹⁸ HFPL is defined as “the frequency above the voiceband on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voiceband transmissions.” This definition applies whether a BOC’s voice customers are served by copper or by digital loop carrier equipment. Competing carriers should have access to the HFPL at either a central office or at a remote terminal. However, the HFPL network element is *only* available on a copper loop facility.¹¹⁹

Section 271(c)(2)(B)(iv) also requires that Qwest demonstrate that it makes line splitting available to competing carriers so that competing carriers may provide voice and data service over a single loop.¹²⁰

The IUB determined that Qwest has met the criteria necessary to be in compliance with checklist item 4. In its "Conditional Statement Regarding August 20, 2001, Report," issued December 21, 2001, the IUB analyzed each of the issues that remained at impasse following the conclusion of the workshop process. Qwest, having incorporated each of the determinations of the IUB into

¹¹⁸ See *Line Sharing Order*, 14 FCC Rcd at 20924-27, paras. 20-27.

¹¹⁹ See *Deployment of Wireline Services offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, 16 FCC Rcd 2101, 2106-07, para. 10 (2001).

¹²⁰ See *generally SWBT Texas Order*, 15 FCC Rcd at 18515-17, paras. 323-329 (describing line splitting); 47 C.F.R. § 51.703(c) (requiring that incumbent LECs provide competing carriers

its current filing, has complied with the requirements of checklist item 4 –

Unbundled Local Loops, to the satisfaction of the IUB.¹²¹

E. Checklist Item 5 – Unbundled Local Transport

Section 271(c)(2)(B)(v) of the competitive checklist requires Qwest to provide “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.”¹²² The FCC has required that BOCs provide both dedicated and shared transport to requesting carriers.¹²³

Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.¹²⁴ Shared transport consists of transmission facilities shared by more than one carrier,

with access to unbundled loops in a manner that allows competing carriers “to provide any telecommunications service that can be offered by means of that network element”).

¹²¹ See Conditional Statement Regarding August 20, 2001, Report, IUB Docket No. INU-00-2, pp. 18-39, issued December 21, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 5)

¹²² 47 U.S.C. § 271(c)(2)(B)(v).

¹²³ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20719, para. 201.

¹²⁴ *Id.* A BOC has the following obligations with respect to dedicated transport: (a) provide unbundled access to dedicated transmission facilities between BOC central offices or between such offices and serving wire centers (SWCs); between SWCs and interexchange carriers points of presence (POPs); between tandem switches and SWCs, end offices or tandems of the BOC, and the wire centers of BOCs and requesting carriers; (b) provide all technically feasible transmission capabilities such as DS1, DS3, and Optical Carrier levels that the competing carrier could use to provide telecommunications; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and, (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that the BOC offers such capabilities to interexchange carriers that purchase transport services. *Id.* at 20719.

including the BOC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the BOC's network.¹²⁵

The IUB determined that Qwest has met the criteria necessary to be in compliance with checklist item 5. In its "Conditional Statement Regarding August 20, 2001, Report," issued December 21, 2001, the IUB analyzed each of the issues that remained at impasse following the conclusion of the workshop process. Qwest, having incorporated each of the determinations of the IUB into its current filing, has complied with the requirements of checklist item 5 – Unbundled Local Transport, to the satisfaction of the IUB.¹²⁶

F. Checklist Item 6 – Unbundled Local Switching

Section 271(c)(2)(B)(vi) of the 1996 Act requires Qwest to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."¹²⁷

¹²⁵ *Id.* at 20719, n.650. The FCC also found that a BOC has the following obligations with respect to shared transport: (a) provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that a BOC uses for its own traffic; (b) provide shared transport transmission facilities between end office switches, between its end office and tandem switches, and between tandem switches in its network; (c) permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the BOC's switch; and, (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating traffic to, customers to whom the requesting carrier is also providing local exchange service. *Id.* at 20720, n.652.

¹²⁶ See Conditional Statement Regarding August 20, 2001, Report, IUB Docket No. INU-00-2, pp. 52-64, issued December 21, 2001 (Qwest Application, Iowa Appendix C, Volume 1, Tab 5); and Conditional Statement Reconsidering Board Conditional Statement Regarding August 20, 2001, Report, pp. 1-8, issued May 9, 2002 (Qwest Application, Iowa Appendix C, Volume 1, Tab 10)

¹²⁷ 47 U.S.C. § 271(c)(2)(B)(vi); *see also Second Bell/South Louisiana Order*, 13 FCC Rcd at 20722. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with "vertical features" such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services.

In the *Second BellSouth Louisiana Order*, the FCC required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.¹²⁸ The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers.¹²⁹ Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.¹³⁰

In the *Second BellSouth Louisiana Order*, the FCC required BellSouth to permit competing carriers to purchase UNEs, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.¹³¹ The FCC also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information.¹³² Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching.¹³³

¹²⁸ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722, para. 207.

¹²⁹ *Id.*

¹³⁰ *Id.* at 20722-23, para. 207.

¹³¹ *Id.* at 20723, para. 208.

¹³² *Id.* at 20723, para. 208 (citing *Ameritech Michigan Order*, 12 FCC Rcd at 20619, para. 140).

¹³³ *Id.*

The IUB determined that Qwest has met the criteria necessary to be in compliance with checklist item 6. In its "Conditional Statement Regarding August 20, 2001, Report," issued December 21, 2001, the IUB analyzed each of the issues that remained at impasse following the conclusion of the workshop process. Qwest, having incorporated each of the determinations of the IUB into its current filing, has complied with the requirements of checklist item 6 – Unbundled Local Switching, to the satisfaction of the IUB.¹³⁴

G. Checklist Item 7 – 911/E911 Access and Directory Assistance/Operator Services

Section 271(c)(2)(B)(vii) of the Act requires Qwest to provide "[n]ondiscriminatory access to – (I) 911 and E911 services."¹³⁵ In the *Ameritech Michigan Order*, the FCC found that "Section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity."¹³⁶ Specifically, the FCC found that a BOC "must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers."¹³⁷ For facilities-based carriers, Qwest must provide "unbundled access to [its] 911 database and 911 interconnection, including the provision of

¹³⁴ See Conditional Statement Regarding August 20, 2001, Report, IUB Docket No. INU-00-2, pp. 64-66, issued December 21, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 5)

¹³⁵ 47 U.S.C. § 271(c)(2)(B)(vii). 911 and E911 services transmit calls from end users to emergency personnel. It is critical that a BOC provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers' customers are able to reach emergency assistance. Customers use directory assistance and operator services to obtain customer listing information and other call completion services.

dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what [the BOC] provides to itself."¹³⁸ Section 271(c)(2)(B)(vii)(II) and Section 271(c)(2)(B)(vii)(III) require Qwest to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively.¹³⁹ Section 251(b)(3) of the Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays."¹⁴⁰

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the March 19, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 4 – 911/E911 Access and Directory Assistance/Operator Services.

¹³⁶ *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

¹⁴⁰ *Id.* § 251(b)(3). The FCC implemented Section 251(b)(3) in the *Local Competition Second Report and Order*. 47 C.F.R. § 51.217; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*) vacated in part sub nom. *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), overruled in part, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); see also *Implementation of the Telecommunications Act of 1996: Provision of Directory Listings Information under the Telecommunications Act of 1934*, Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (*Directory Listings Information NPRM*).

The IUB adopted each of the resolutions as recommended by Liberty in its report. Qwest, having incorporated the recommendations in its current filing, has met the requirements of checklist item 7 - 911/E911 Access and Directory Assistance/Operator Services, to the satisfaction of the IUB.¹⁴¹

H. Checklist Item 8 – White Pages Directory Listings

Section 271(c)(2)(B)(viii) of the 1996 Act requires Qwest to provide “[w]hite pages directory listings for customers of the other carrier’s telephone exchange service.”¹⁴² Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listing.¹⁴³

In the *Second BellSouth Louisiana Order*, the FCC concluded that, “consistent with the FCC’s interpretation of ‘directory listing’ as used in Section 251(b)(3), the term ‘white pages’ in Section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider.”¹⁴⁴ The FCC further concluded, “the term ‘directory listing,’ as used in this Section, includes, at a minimum, the subscriber’s name, address, telephone number, or any combination thereof.”¹⁴⁵

¹⁴¹ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

¹⁴² 47 U.S.C. § 271(c)(2)(B)(viii).

¹⁴³ *Id.* § 251(b)(3).

¹⁴⁴ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255.

¹⁴⁵ *Id.* In the *Second BellSouth Louisiana Order*, the FCC stated that the definition of “directory listing” was synonymous with the definition of “subscriber list information.” *Id.* at 20747 (citing the *Local Competition Second Report and Order*, 11 FCC Rcd at 19458-59). However, the FCC’s decision in a later proceeding obviates this comparison, and supports the definition of

The FCC's *Second BellSouth Louisiana Order* also held that a BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and, (2) provided white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers.¹⁴⁶

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the March 19, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on the issues remaining subject to disagreement related to the group of checklist items listed above. The IUB adopted each of the resolutions as recommended by Liberty in its report. Qwest, having incorporated the recommendations in its current filing, has met the requirements of checklist item 8 – White Pages Directory Listings, to the satisfaction of the IUB.¹⁴⁷

directory listing delineated above. See *Implementation of the Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Third Report and Order; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Order on Reconsideration; *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, FCC 99-227, Notice of Proposed Rulemaking, para. 160 (rel. Sept. 9, 1999).

¹⁴⁶ *Id.*

¹⁴⁷ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

I. Checklist Item 9 – Numbering Administration

Section 271(c)(2)(B)(ix) of the 1996 Act requires Qwest to provide “nondiscriminatory access to telephone numbers for assignment to the other carrier’s telephone exchange service customers,” until “the date by which telecommunications numbering administration, guidelines, plan, or rules are established.”¹⁴⁸ The checklist mandates compliance with “such guidelines, plan, or rules” after they have been established.¹⁴⁹ Qwest must demonstrate that it adheres to industry numbering administration guidelines and FCC rules.¹⁵⁰

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the March 19, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 9 – Numbering Administration. The IUB adopted each of the resolutions as recommended by Liberty in its report. Qwest, having incorporated the recommendations in its current filing, has met the requirements of each checklist item 9 – Numbering Administration, to the satisfaction of the IUB.¹⁵¹

¹⁴⁸ 47 U.S.C. § 271(c)(2)(B)(ix).

¹⁴⁹ *Id.*

¹⁵⁰ See *Second Bell South Louisiana Order*, 13 FCC Rcd at 20752; see also *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000); *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, CC Docket Nos. 96-98; 99-200 (rel. Dec. 29, 2000); *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200 (rel. Dec. 28, 2001).

¹⁵¹ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

J. Checklist Item 10 – Databases and Associated Signaling

Section 271(c)(2)(B)(x) of the 1996 Act requires Qwest to provide “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”¹⁵² In the *Second BellSouth Louisiana Order*, the FCC required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: “(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and, (3) Service Management Systems (SMS).”¹⁵³ The FCC also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).¹⁵⁴ In the *Local Competition First Report and Order*, the FCC defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of telecommunications service.¹⁵⁵ At that time the FCC required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network

¹⁵² 47 U.S.C. § 271(c)(2)(B)(x).

¹⁵³ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20753, para. 267.

¹⁵⁴ *Id.* at 20755-56, para. 272.

databases.¹⁵⁶ In the *UNE Remand Order*, the FCC clarified that the definition of call-related databases “includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases.”¹⁵⁷

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the March 19, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 10 – Databases and Associated Signaling. The IUB adopted each of the resolutions as recommended by Liberty in its report. Qwest, having incorporated the recommendations in its current filing, has met the requirements of checklist item 10 - Databases and Associated Signaling, to the satisfaction of the IUB.¹⁵⁸

K. Checklist Item 11 – Number Portability

Section 271(c)(2)(B) of the 1996 Act requires Qwest to comply with the number portability regulations adopted by the FCC pursuant to Section 251.¹⁵⁹ Section 251(b)(2) requires all LECs “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the FCC.”¹⁶⁰

¹⁵⁵ *Local Competition First Report and Order*, 11 FCC Rcd at 15741, n.1126; *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

¹⁵⁶ *Id.* at 15741-42, para. 484.

¹⁵⁷ *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

¹⁵⁸ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

¹⁵⁹ 47 U.S.C. § 271(c)(2)(B)(xii).

¹⁶⁰ *Id.* at § 251(b)(2).

The 1996 Act defines number portability as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”¹⁶¹ In order to prevent the cost of number portability from thwarting local competition, Congress enacted Section 251(e)(2), which requires that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the FCC.”¹⁶² Pursuant to these statutory provisions, the FCC requires LECs to offer interim number portability “to the extent technically feasible.”¹⁶³ The FCC also requires LECs to gradually replace interim number portability with permanent number portability.¹⁶⁴ The FCC has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,¹⁶⁵ and created a

¹⁶¹ *Id.* at § 153(30).

¹⁶² *Id.* at § 251(e)(2); *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20757, para. 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) (*Third Number Portability Order*); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 16459, 16460, 16462-65, paras. 1, 6-9 (1999) (*Fourth Number Portability Order*).

¹⁶³ *Fourth Number Portability Order*, 15 FCC Rcd at 16465, para. 10; *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8409-12, paras. 110-16 (1996) (*First Number Portability Order*); *see also* 47 U.S.C. § 251(b)(2).

¹⁶⁴ *See* 47 C.F.R. §§ 52.3(b)-(f); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355, 8399-8404, paras. 3, 91; *Third Number Portability Order*, 13 FCC Rcd at 11708-12, paras. 12-16.

¹⁶⁵ *See* 47 C.F.R. § 52.29; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8417-24, paras. 127-40.

competitively neutral cost-recovery mechanism for long-term number portability.¹⁶⁶

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the May 15, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 11 – Number Portability. The IUB analyzed each of the impasse issues including the resolutions as recommended by Liberty in its report. In its "Conditional Statement Regarding May 15, 2001, Report," the IUB made determinations which it directed Qwest to incorporate into its SGAT. In a reconsideration of one of the impasse issue determinations made by the IUB, further analysis was given to a suggestion by AT&T that it was premature to reach any conclusion regarding Qwest's provisioning of LNP. The request for reconsideration was rejected by the IUB.¹⁶⁷ Qwest, having incorporated the recommendations of the IUB in its current filing, has met the requirements of checklist item 11 – Number Portability, to the satisfaction of the IUB.¹⁶⁸

¹⁶⁶ See 47 C.F.R. §§ 52.32, 52.33; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *Third Number Portability Order*, 13 FCC Rcd at 11706-07, para. 8; *Fourth Number Portability Order* at 16464-65, para. 9.

¹⁶⁷ See Reconsideration of Conditional Statement Regarding Checklist Item 11: Local Number Portability, IUB Docket No. INU-00-2, issued May 31, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 13)

¹⁶⁸ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

L. Checklist Item 12 – Local Dialing Parity

Section 271(c)(2)(B)(xii) requires Qwest to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3).”¹⁶⁹ Section 251(b)(3) imposes upon all LECs “[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays.”¹⁷⁰ Section 153(15) of the Act defines “dialing parity” as follows:

[A] person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation.¹⁷¹

The rules implementing Section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC’s customers dial to complete a local telephone call.¹⁷² Moreover, customers of

¹⁶⁹ Based on the FCC’s view that Section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (*i.e.*, international, interstate, intrastate, or local), the FCC adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. *Local Competition Second Report and Order*, 11 FCC Rcd at 19407; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

¹⁷⁰ 47 U.S.C. § 251(b)(3).

¹⁷¹ *Id.* § 153(15).

¹⁷² 47 C.F.R §§ 51.205, 51.207.

competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers.¹⁷³

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the March 19, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 12 – Local Dialing Parity. The IUB adopted each of the resolutions as recommended by Liberty in its report. Qwest, having incorporated the recommendations in its current filing, has met the requirements of checklist item 12 – Local Dialing Parity, to the satisfaction of the IUB.¹⁷⁴

M. Checklist Item 13 – Reciprocal Compensation

Section 271(c)(2)(B)(xiii) of the Act requires that Qwest enter into “[r]eciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2).”¹⁷⁵ In turn, pursuant to Section 252(d)(2)(A), “a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier; and, (ii) such

¹⁷³ See 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); *Local Competition Second Report and Order*, 11 FCC Rcd at 19400, 19403.

¹⁷⁴ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.”¹⁷⁶

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the May 15, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on checklist item 13 – Reciprocal Compensation. The IUB analyzed each of the impasse issues including the resolutions as recommended by Liberty in its report. In its "Conditional Statement Regarding May 15, 2001, Report," the IUB made determinations which it directed Qwest to incorporate into its filing. In a reconsideration of two of the impasse issue determinations made by the IUB, further analysis was given to issues related to Internet Service Provider (ISP) traffic and the commingling of special access and local traffic. The request for reconsideration was rejected by the IUB.¹⁷⁷ Qwest, having incorporated the recommendations in its current filing, has met the requirements of checklist item 13 – Reciprocal Compensation, to the satisfaction of the IUB.¹⁷⁸

¹⁷⁵ 47 U.S.C. § 271(c)(2)(B)(xiii).

¹⁷⁶ *Id.* § 252(d)(2)(A).

¹⁷⁷ See Reconsideration of Conditional Statement Regarding Checklist Item 13: Reciprocal Compensation, IUB Docket No. INU-00-2, issued May 31, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 14)

¹⁷⁸ See Conditional Statement Regarding March 19, 2001 Report, IUB Docket No. INU-00-2, issued June 22, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 2)

N. Checklist Item 14 – Resale

Section 271(c)(2)(B)(xiv) of the Act requires Qwest to make “telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).”¹⁷⁹ Section 251(c)(4)(A) requires incumbent LECs “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.”¹⁸⁰ Section 252(d)(3) requires state commissions to “determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.”¹⁸¹ Section 251(c)(4)(B) prohibits “unreasonable or discriminatory conditions or limitations” on service resold under Section 251(c)(4)(A).¹⁸²

For each issue where agreement was reached among the participants, the IUB accepted those agreements. After reviewing the May 15, 2001, report, the testimony filed by Qwest and other interested participants, and briefs, the IUB found that no further proceedings were necessary to reach a determination on the issues remaining subject to disagreement related to this checklist item. The IUB analyzed each of the impasse issues including the resolutions as

¹⁷⁹ *Id.* § 271(c)(2)(B)(xiv).

¹⁸⁰ *Id.* § 251(c)(4)(A).

¹⁸¹ *Id.* § 252(d)(3).

¹⁸² *Id.* § 251(c)(4)(B).

recommended by Liberty in its report. In its "Conditional Statement Regarding May 15, 2001, Report," the IUB made determinations which it directed Qwest to incorporate into its filing. A request for the IUB to reconsider its finding of compliance with this checklist item was addressed in a subsequent statement. The request for reconsideration was rejected by the IUB.¹⁸³ Qwest, having incorporated the recommendations in its current filing, has met the requirements checklist item 14 – Resale, to the satisfaction of the IUB.¹⁸⁴

V. COMPLIANCE WITH SEPARATE AFFILIATE REQUIREMENTS – SECTION 272

Section 271(d)(3)(B) requires that Qwest demonstrate that the "requested authorization will be carried out in accordance with the requirements of Section 272."¹⁸⁵ The FCC set standards for compliance with Section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.¹⁸⁶

Together, these safeguards will discourage and facilitate the detection of

¹⁸³ See Reconsideration of Conditional Statement Regarding Checklist Item 14: Resale, IUB Docket No. INU-00-2, issued May 28, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 11)

¹⁸⁴ See Conditional Statement Regarding June 11, 2001 Report, IUB Docket No. INU-00-2, issued October 12, 2001. (Qwest Application, Iowa Appendix C, Volume 1, Tab 3)

¹⁸⁵ 47 U.S.C. § 271(d)(3)(B).

¹⁸⁶ See *Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), petition for review pending sub nom. *SBC Communications v. FCC*, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), aff'd sub

improper cost allocation and cross-subsidization between Qwest and its Section 272 affiliate, Qwest Communications Corporation (QCC), and ensure that Qwest does not discriminate in favor of QCC.¹⁸⁷

As the FCC stated in the *Ameritech Michigan Order*, compliance with Section 272 is “of crucial importance” because the structural, transactional, and nondiscrimination safeguards of Section 272 seek to ensure that BOCs compete on a level playing field.¹⁸⁸ The FCC’s findings regarding Section 272 compliance constitute independent grounds for denying an application.¹⁸⁹

Qwest’s compliance with Section 272 (d)-(g) was not briefed prior to the release of Liberty’s report on the issues related to Section 272, an indication that no participant had issues about Qwest’s compliance with those requirements. Liberty’s report addressed 20 sub-issues under 272 sections (a)-(c). Liberty concluded that the record demonstrated Qwest had met each of the separate affiliate requirements of section 272.¹⁹⁰ However, in addressing evidence provided by AT&T under the books and records requirement of section 272(b), Liberty noted problems Qwest had previously had in bringing its transactions into compliance with applicable accounting requirements.

nom. Bell Atlantic Telephone Companies v. FCC, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

¹⁸⁷ *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

¹⁸⁸ *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

¹⁸⁹ *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-86, para. 322; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

¹⁹⁰ Liberty September 24, 2001, Report, p. 7.

In recognition of the problems with Qwest's books and records, Liberty recommended additional third-party testing of Qwest's practices for the period April 2001 to August 2001. Liberty suggested that the testing evaluate whether: (a) Qwest is accurate, complete, and timely as it records transactions between Qwest and its 272 affiliate; (b) the relationship between Qwest and its 272 affiliate is carried out at arms length; and, (c) reasonable assurances exist that the practices addressing points (a) and (b) will continue. In all, Liberty tied its recommendation for additional third party testing to six of the 20 sub-issues addressed in its report.

In its post-report comments, Qwest denied the necessity of the third-party testing, but agreed to compliance in order to expedite the section 272 process. Qwest engaged KPMG to conduct the testing based on the recommendations in the September 24, 2001, report. Qwest filed KPMG's report of the examination on November 15, 2001.

Although Liberty concluded that Qwest had met each of the separate affiliate requirements of section 272 and no participant filed comments objecting to any of the report recommendations, after the KPMG report was filed it became clear that impasse issues remained. The comments received by the IUB in response to the KPMG report were broken down into six different issues, including; 1) scope of KPMG examination; 2) detail of KPMG examination; 3) materiality; 4) time period covered by KPMG examination; 5) instances of noncompliance; and, 6) inappropriate use of testimony to refute KPMG findings.

In its "Conditional Statement Regarding 47 U.S.C. § 272 Compliance," issued April 4, 2002, the IUB discussed each of the separate issues that were raised following the release of KPMG's report, concluding that Qwest had satisfied the requirements of 47 U.S.C. Section 272.¹⁹¹

VI. COMPLIANCE WITH THE PUBLIC INTEREST – SECTION 271(D)(3)(C)

In addition to determining whether Qwest satisfies the competitive checklist and will comply with Section 272, Congress directed the FCC to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.¹⁹² The FCC has noted that compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest, an approach reflecting the FCC's many years of experience with the consumer benefits that flow from competition in telecommunications markets.

Because the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination,¹⁹³ the FCC views the public interest requirement

¹⁹¹ See also, Reconsideration of Conditional Statement Regarding 47 U.S.C. § 272 Compliance, IUB Docket No. INU-00-2, issued May 28, 2002 (Qwest Application, Iowa Appendix C, Volume 1, Tab 12. As was indicated, no issues were raised prior to the release of Liberty's September 24, 2001, report concerning Qwest's compliance with Section 272 (d)-(g). In comments filed by AT&T on April 23, 2002, it questioned Qwest's compliance with Section 272 (e)(1). In denying AT&T's request for reconsideration, the IUB noted that no new evidence was presented that was not available to it when it made its initial decision.

¹⁹² 47 U.S.C. § 271(d)(3)(C).

¹⁹³ In addition, Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion. See

as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, the FCC may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of the application at issue.¹⁹⁴ Another factor that could be relevant to the analysis is whether the FCC has sufficient assurance that markets will remain open after grant of the application. While no one factor appears to be dispositive in its analysis, the overriding goal is to ensure that nothing undermines the conclusion, based on the FCC's analysis of checklist compliance, that markets are open to competition.

During the multi-state workshop process, Liberty ruled that any public interest issue that restated an issue from a checklist item in a manner that attempted to merely increase Qwest's burden of proof would be disregarded, indicating that without such a limitation, the intent of Congress in adopting the checklist, while also allowing a separate consideration of public interest matters, would be compromised.

Ameritech Michigan Order, 12 FCC Rcd at 20747 at para. 360-66; *see also* 141 Cong. Rec. S7971, S8043 (June. 8, 1995).

¹⁹⁴ *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of "whether approval . . . will foster competition in all relevant telecommunications markets").

In its "Conditional Statement Regarding Public Interest and Track A," the IUB considered each of the impasse issues raised as public interest concerns and concluded that it could recommend to the FCC that Qwest had conditionally satisfied the public interest requirements.¹⁹⁵ The conditional status was necessary when the public interest issue was initially analyzed because the IUB had not yet reviewed Qwest's performance assurance plan (IA-QPAP).

In response to the IUB's January 25, 2002, conditional statement, AT&T urged reconsideration of its earlier arguments that Qwest's UNE prices are so high as to present an insurmountable barrier to competition, based on a D.C. Circuit Court of Appeals opinion issued December 28, 2001.¹⁹⁶ Additionally, the Iowa Consumer Advocate requested an oral argument be scheduled to consider the effect of *Sprint* on the public interest issue.

In all, it was requested that the IUB reconsider four separate issues pertaining to the public interest of Qwest's entry into the in-region interLATA market. These included: 1) UNE price squeeze; 2) intrastate access price squeeze; 3) prior Qwest conduct; and, 4) the level of competition. The IUB scheduled an oral argument, which was held March 14, 2002. After considering the arguments, the IUB concluded that it was still able to conditionally

¹⁹⁵ See Conditional Statement Regarding Public Interest and Track A, IUB Docket No. INU-00-02, pp. 1-18, issued January 25, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 6)

¹⁹⁶ See *Sprint Communications Co. L. P. v. Federal Communications Comm'n*, 274 F.3d 549 (D.C. Cir. 2001) (*Sprint*)

recommend (subject to the review of the QPAP) to the FCC that the public interest requirements had been met.¹⁹⁷

On May 14, 2002, AT&T filed a motion with the IUB to reopen the Section 271 proceedings to allow admission of additional evidence relating to certain unfiled agreements between Qwest and some new entrants. According to its Motion, AT&T asserted the unfiled agreements related directly to the provision of interconnection services by Qwest and carried significant public interest implications.

The IUB considered in a separate docket the matter of Qwest's failure to file what the IUB determined to be interconnection agreements by issuing its "Order Making Tentative Findings, Giving Notice For Purposes of Civil Penalties and Granting Opportunity to Request Hearing."¹⁹⁸ Thus, in considering the implication of the same agreements as they might relate to the public interest analysis, the IUB found:

In order for Qwest to move beyond a state of "public interest limbo," the Board has previously adopted a standard, "that past behavior must be predictive of future behavior." This standard is met by the Board's May 29, 2002, order in Docket No. FCU-02-2. As noted above, Qwest was put on notice that it would be subject to civil penalties for failing to file agreements in the future. The prospect of significant monetary

¹⁹⁷ For a full discussion of each of the issues, and the IUB's conclusions, see Conditional Statement Reconsidering Public Interest, IUB Docket No. INU-00-2, issued June 7, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 25)

¹⁹⁸ *In Re: AT&T Corporation v. Qwest Corporation*, IUB Docket No. FCU-02-2, Order Making Tentative Findings, Giving Notice for Purposes of Civil Penalties, and Granting Opportunity to Request Hearing, issued May 29, 2002.

penalties should act as a strong deterrent against future violations.

The resolution of this issue in Docket No. FCU-02-2 would appear to serve the objectives of the FCC. Most recently the FCC indicated the following about the public interest inquiry:

Thus the Commission views the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will serve the public interest as Congress expected.(Footnote omitted).

The FCC appears to regard the goal of the public interest inquiry as an opportunity to identify and correct problems, beyond the competitive checklist, that would impede the opening of local markets to competition. As for Qwest's unfiled agreements, it would seem that the Board has already acted to accomplish that goal in Docket No. FCU-02-2.¹⁹⁹

At the conclusion of the process, having considered all initial impasse issues, reconsideration of impasse determinations, and the impact of any interconnection agreements not previously filed with it, the IUB still found that it could recommend to the FCC that Qwest has met the public interest requirement.

The FCC has delineated five general characteristics that must be part of a Section 271 performance assurance plan part of a "zone of reasonableness" analysis. These include:

¹⁹⁹ See Order to Consider Unfiled Agreements, IUB Docket No. INU-00-2, issued June 7, 2002. (Qwest Application, Iowa Appendix P, Volume 3, Tab 24)

- Meaningful and significant incentive to comply with designated performance standards.
- Clearly articulated and pre-determined measures and standards encompassing a range of carrier-to-carrier performance.
- Reasonable structure designed to detect and sanction poor performance when and if it occurs.
- Self-executing mechanism that does not open the door unreasonably to litigation and appeal.
- Reasonable assurance that the reported data are accurate.²⁰⁰

After a rather lengthy process of collaborations, workshops, testimony, and briefs, the IUB was presented with a report by Liberty that outlined close to 70 issues related to Qwest's proposed performance assurance plan that remained at impasse. Additionally, Liberty made recommendations for 29 separate changes to the QPAP initially filed (following the initial eleven-state collaborative) by Qwest.

The IUB issued a conditional statement addressing each of the issues identified as being at impasse, and making a determination specific to each impasse issue.²⁰¹ Following the issuance of its statement regarding the QPAP, the IUB was asked to reconsider six issues.²⁰²

²⁰⁰ See *Bell Atlantic New York Order*, 15 FCC Rcd 3953 para. 433.

²⁰¹ For a full review of the IUB's analysis of each of the impasse issues, see, Conditional Statement Regarding Qwest Performance Assurance Plan, IUB Docket No. INU-00-2, issued May 7, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 9)

²⁰² See Reconsideration of Conditional Statement Regarding Qwest Performance Assurance Plan, IUB Docket No. INU-00-2, issued June 7, 2002. (Qwest Application, Iowa Appendix C, Volume 1, Tab 17)

The IUB noted that in addition to the FCC's enforcement authority under Section 271(d)(6):

The QPAP will be incorporated into Qwest's statement of generally available terms and conditions (SGAT) as Exhibit K. As part of an interconnection agreement, adopted by a CLEC, it then must be reviewed by the Board pursuant to 47 U.S.C. § 252. Section 272 expressly provides the Board the authority to create and enforce a performance assurance plan, as part of an interconnection agreement.²⁰³

The IUB contends that the Iowa QPAP will provide sufficient assurance that markets will remain open after a grant by the FCC of authority to provide in-region, interLATA service in the State of Iowa.

VII. OTHER CONSIDERATIONS

The FCC adopted general procedural requirements related to the processing of all applications for authorization under Section 271.²⁰⁴ Included in those filing requirements is the following statement:

We encourage state commissions to include in their evaluations a discussion of any complaints that have been filed against the BOC, either at the state commission or in federal court, pursuant to sections 251 and 252 of the Act.

Because no time frame of reference is indicated, the following is a list of complaints filed against Qwest with the IUB since the initiation of its docket to investigate Qwest's compliance with Section 271 requirements. Also provided is

²⁰³ *Id.* at 23.

a brief statement of the allegations made, a truncated procedural history, and the disposition of the complaint by the IUB.

Docket No. FCU-00-1 – Goldfield Access Network, L.C. v. U S West Communications, Inc., filed January 20, 2000. Goldfield alleged anticompetitive acts in violation of Iowa Code §§ 476.100 and 476.101 (Iowa's local exchange competition statutes) and the Goldfield/Qwest interconnection agreement. Specifically, the complaint alleged violations pertaining to issues of local number portability, EAS service, and service quality. The Board held a hearing on March 2, 2000. On April 14, 2000, the Board ruled against Goldfield as outlined in its Order Denying Complaint.

Docket No. FCU-00-2 – Crystal Communications, Inc. v. U S West Communications, Inc., filed May 24, 2000. Crystal alleged anticompetitive acts in violation of Iowa Code §§ 476.100 and 476.101 (Iowa's local exchange competition statutes). Specifically, the complaint alleged that U S West had disconnected a number of Crystal's resale customers based on orders from the customers' previous service provider, CommSouth. Qwest filed a response to the complaint stating that it had taken steps to prevent recurrence of the circumstances that resulted in the complaint. On June 30, 2000, Crystal filed a letter requesting the complaint be withdrawn. On July 24, 2000, the Board issued an Order Granting Request to Withdraw Complaint and Closing Docket.

Docket No. FCU-02-1 – Cox Iowa Telecom, LLC v. Qwest Corporation, filed January 3, 2002. Cox alleged that Qwest's decision to offer local service freezes was an anticompetitive act. A hearing was held on March 4, 2002. On April 3, 2002, the Board issued a Final Decision and Order ruling that Qwest's imposition of local service freezes would have a detrimental effect on local service competition. Qwest was prohibited from further provision of local service freezes in Iowa. Any Iowa customers previously enrolled in the local

²⁰⁴ See *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB rel. Mar. 23, 2001).

service freeze option were to be notified and removed from the program.

Docket No. FCU-02-2 – AT&T Corporation v. Qwest Corporation, filed on February 27, 2002. AT&T alleged that Qwest had entered into a series of secret agreements granting preferential treatment to some CLECs. AT&T noted a similar complaint before the Minnesota Public Utilities Commission where agreements had not been filed with the state commission as required by 47 U.S.C. §§ 251 and 252. On April 1, 2002, the Board ordered the parties to the complaint to file initial and reply briefs.

On May 29, 2002, the Board issued an Order Making Tentative Findings, Giving Notice for Purposes of Civil Penalties, and Granting Opportunity to Request Hearing. In that order the Board drew a tentative conclusions that three unfiled agreements were interconnection agreements. Based on those conclusions, the Board determined Qwest had violated §§ 251 and 252, as well as an Iowa rule, requiring the filing of interconnection agreements. Qwest was required to file any other non-filed interconnection agreements with the Board within 60 days. Qwest was put on notice that it would be subject to civil penalties, pursuant to Iowa Code § 476.51, for future violations. Qwest, however, was given 20 days to request a hearing on the Board's tentative conclusions. If Qwest did not request a hearing, the Board's tentative conclusions would become final.

On June 18, 2002, Qwest filed a motion to extend the deadline, for requesting a hearing. On June 19, 2002, the Board issued an Order Granting Motion for Extension of Time until June 28, 2002. On June 28, 2002, Qwest filed a Statement Concerning the Iowa Utilities Board's May 29, 2002 Order and Motion indicating it would not request a hearing.

However, Qwest stated that its filing of agreements would generally fall into two categories. The first would be "contractual arrangements" which would appear to fall within the Board's definition of "interconnection agreement" as outlined in the May 29, 2002, order. The second would be documents, which do not reasonably appear to be

interconnection agreements under § 252(a)(1), but which might fall within the Board's definition of "interconnection agreement." Qwest would present the second category of documents, on a case-by-case basis, and request the Board's assistance in determining whether the particular document would fall within the interconnection agreement definition articulated by the Board.

Qwest also noted that this issue is currently pending before the FCC.²⁰⁵ Thus, Qwest requested the Board keep the docket open to bring the Board's attention to any inconsistency between the Board's § 252(a) standard and that adopted by the FCC. Additionally, Qwest requested the docket remain open to permit the parties to seek clarification of the Board's "interconnection agreement" definition in light of its experience in attempting to apply it.

²⁰⁵ See, *In the Matter of Qwest Communications International Inc., Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Agreements under Section 252(a)(1)*, WC Docket No. 02-89(FCC).

VIII. CONCLUSION

The Iowa Utilities Board has determined that Qwest has complied with each of the statutory requirements for entry into the in-region, interLATA service market and recommends that the FCC grant Qwest's application for the State of Iowa.

Respectfully submitted,

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ON BEHALF OF THE IOWA
UTILITIES BOARD

Dated: July 3, 2002.